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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 LUCAS OSBORNE,

9 Plaintiff,

10 v.

11 CLARK COUNTY SHERIFF'S
12 OFFICE, et al.,

13 Defendants.

CASE NO. 3:16-CV-05307-BHS-DWC

ORDER

14 The District Court has referred this 42 U.S.C. § 1983 action filed by Plaintiff Lucas
15 Osborne to United States Magistrate Judge David W. Christel. Presently before the Court is
16 Plaintiff's "Motion for Leave to File and Amend and Strike All Current Dates and Add New
17 Trial and Discovery Dates" ("Motion"). Dkt. 39. Plaintiff seeks leave to file an amended
18 complaint and requests the Court grant an extension of time to respond to Defendants' Motion
19 for Summary Judgment, if the Court does not give him leave to amend. *Id.*

20 The Court concludes allowing Plaintiff to file an amended complaint will cause undue
21 delay and prejudice, and therefore the Motion is denied. However, the Court provides Plaintiff
22 with an extension of time to file a response to Defendants' Motion for Summary Judgment.
23 Plaintiff's response to Defendants' Motion for Summary Judgment is due on or before October
24 24, 2017. Defendants' reply is due on or before October 27, 2017 and the Motion for Summary
Judgment is re-noted for October 27, 2017.

1 **I. Background**

2 In the Amended Complaint, Plaintiff alleges his constitutional rights were violated when
3 he was denied phone privileges and then denied a hearing regarding his loss of phone privileges.
4 Dkt. 13. He also contends he was denied personal mail. *Id.* In the Motion, Plaintiff seeks to
5 remove Defendants Clark County Sheriff's Office, Clark County Jail, Judge Robert Lewis, R.
6 Tyrell, Officer Darling, Sergeant Wolf, and Sergeant Ashworth and add Clark County, the City
7 of Vancouver, and Detective Sandra Aldridge as defendants. Dkt. 38.

8 Plaintiff initiated this lawsuit on April 22, 2016. Dkt. 1. He filed the Amended Complaint
9 on June 13, 2016. Dkt. 13. On July 26, 2016, the Court entered a Pretrial Scheduling Order, setting
10 a discovery deadline and a dispositive motion deadline. Dkt. 19. After the Court granted an
11 extension of time, the discovery period ended on April 25, 2017 and dispositive motions were due
12 on or before May 26, 2017. Dkt. 26. On May 24, 2017, Defendants filed a Motion for Summary
13 Judgment. Dkt. 33. Plaintiff signed – effectively filing – the Motion on June 30, 2017. Dkt. 38.
14 Defendants filed a Response on July 18, 2017, requesting the Court deny the Motion. Dkt. 39.

15 **II. Discussion**

16 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

17 (1) ***Amending as a Matter of Course***

18 A party may amend its pleading once as a matter of course within: (A) 21 days
19 after serving it, or

20 (B) if the pleading is one to which a responsive pleading is required, 21 days after
21 service of a responsive pleading or 21 days after service of a motion under Rule
22 12(b), (e), or (f), whichever is earlier.

23 (2) ***Other Amendments***

24 In all other cases, a party may amend its pleading only with the opposing party's
written consent or the court's leave. The court should freely give leave when
justice so requires.

1 As Plaintiff filed an Amended Complaint and the time has expired for filing an amendment as a
2 matter of course, Plaintiff cannot amend pursuant to Rule 15(a)(1). *See* Dkt. 13, 18. Further,
3 Defendants have not provided written consent allowing Plaintiff to amend. *See* Dkt. 39. Thus, to
4 amend the Amended Complaint, Plaintiff must have the Court's leave. *See* Fed.R.Civ.P.
5 15(a)(2).

6 "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so
7 requires.'" *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 445 F.3d 1132, 1136 (9th Cir. 2006)
8 (*quoting* Fed.R.Civ.P. 15(a)). In determining whether leave to amend is appropriate, the district
9 court considers 'the presence of any of four factors: bad faith, undue delay, prejudice to the
10 opposing party, and/or futility.'" *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d 708,
11 712 (9th Cir. 2001) (*quoting* *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir. 1999)).
12 Plaintiff's Motion causes both undue delay and prejudice.

13 First, "[r]elevant to evaluating the delay issue is whether the moving party knew or should
14 have known the facts and theories raised by the amendment in the original pleading." *Jackson v.*
15 *Bank of Hawaii*, 902 F.2d 1385, 1388 (9th Cir. 1990). The Ninth Circuit has noted "late
16 amendments to assert new theories are not reviewed favorably when the facts and theory have
17 been known to the party seeking amendment since the inception of the cause of action." *Acri v.*
18 *International Ass'n of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986).
19 "Courts have [also] found undue delay weighing against granting leave to amend where a motion
20 for leave to amend is filed near or after the close of discovery." *Ewing v. Megrdle*, 2015 WL
21 1519088, *4 (C.D. Cal. March 26, 2015) (summarizing Ninth Circuit cases affirming denials of
22 motions to amend due to undue delay when the motions were filed near or after the close of
23 discovery).
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1 At the time of filing his Complaint and Amended Complaint, Plaintiff was or should have
2 been aware of the facts surrounding the allegations contained in his Motion. Plaintiff was put on
3 notice by the Court in May of 2016, prior to filing the Amended Complaint, a municipality is the
4 proper defendant when alleging constitutional violations committed by an agency of a county or
5 city. Dkt. 12. Therefore, Plaintiff was on notice for more than a year that Clark County and the
6 City of Vancouver would be proper defendants in this case. Additionally, it appears Plaintiff was
7 aware of the claims against Detective Aldridge in April of 2016. *See* Dkt. 38, pp. 7-8; Dkt. 39.
8 Plaintiff provides no explanation as to why he waited over a year to move to add three additional
9 defendants. Moreover, Plaintiff's Motion was not filed until two months after the close of
10 discovery. *See* Dkt. 26. Allowing Plaintiff to amend his Amended Complaint at this date would
11 cause undue delay.

12 Second, allowing Plaintiff to amend his Amended Complaint will prejudice the current
13 and proposed opposing parties. Plaintiff is attempting to remove several defendants and add three
14 new defendants. *See* Dkt. 38. Plaintiff's original Complaint and Amended Complaint failed to
15 identify the three proposed defendants or state facts which give rise to the assertions contained in
16 this Motion. *See* Dkt. 9, 13. Plaintiff requests time to investigate his claims. Dkt. 38. This would
17 require additional discovery and require the discovery period to be reopened. The proposed
18 defendants will be joining the litigation after the discovery period and deadline for filing
19 dispositive motions expired, causing added time and expenses for current Defendants. Therefore,
20 allowing Plaintiff to amend his Amended Complaint will cause prejudice to the current and
21 proposed opposing parties. *See Jackson*, 902 F.2d at 1387; *Acri*, 781 F.2d at 1398-99 (affirming
22 denial of leave to amend and holding the district court did not abuse its discretion in concluding
23 that allowing an amendment would prejudice the defendant because of the necessity for further
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1 discovery); *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) (“Putting the defendants
2 through the time and expense of continued litigation on a new theory, with the possibility of
3 additional discovery, would be manifestly unfair and unduly prejudicial.”) (*cited by Jackson*, 902
4 F.2d at 1387).

5 Allowing Plaintiff to amend the Amended Complaint will cause undue delay and
6 prejudice to the current Defendants and the three proposed defendants; therefore, Plaintiff’s
7 request to amend his complaint (Dkt. 38) is denied. If Plaintiff wishes to withdraw claims against
8 any named Defendants he may do so in his response to Defendants’ Motion for Summary
9 Judgment or in a separately filed motion.

10 Plaintiff requests an extension of 120 days to respond to Defendants’ Summary Judgment
11 Motion if he is denied leave to amend. *See* Dkt. 38. Plaintiff states he will be released from
12 incarceration on September 24, 2017 and cannot review evidence, which is on disc, until he is
13 released. *Id.* Defendants did not directly respond to Plaintiff’s request for an extension of time.
14 *See* Dkt. 39. After reviewing the relevant record, the Court finds an extension of time to respond
15 to Defendants’ Motion for Summary Judgment is warranted. Plaintiff shall have until October
16 24, 2017 to file a response to Defendant’s Motion for Summary Judgment. Defendants’ reply to
17 Plaintiff’s response shall be filed on or before October 27, 2017.

18 The Clerk is directed to re-note Defendants’ Motion for Summary Judgment (Dkt. 33) for
19 October 27, 2017.

20 Dated this 28th day of August, 2017.

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23 David W. Christel
24 United States Magistrate Judge